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10 Attorneys for Defendant  
11 HOME DEPOT U.S.A., INC.

12  
13 UNITED STATES DISTRICT COURT  
14 NORTHERN DISTRICT OF CALIFORNIA  
15 SAN FRANCISCO DIVISION

16  
17 B&O MANUFACTURING, INC.,

18 Plaintiff,

19 v.

20 HOME DEPOT U.S.A., INC.,

21 Defendant.

CASE NO. C07 02864 JSW

**NOTICE OF SUBSTITUTION OF  
ORIGINAL DECLARATION BY DAVID  
CURLEY**

22  
23 Home Depot U.S.A, Inc. ("Home Depot"), having submitted the original Declaration of  
24 David Curley on August 17, 2007 as Exhibit B to Home Depot's Notice of Motion and Motion to  
25 (1) Transfer Venue to the Northern District of Georgia and (2) Dismiss Counts Two through Five  
26 of Plaintiff's Second Amended Complaint, hereby gives notice of substitution of the original

1 Declaration with the signed Declaration of David Curley, attached hereto.  
2

3 Respectfully submitted this 22<sup>nd</sup> day of August 2007.  
4

5 BONDURANT, MIXSON & ELMORE LLP  
6

7 By: 

8 Christopher T. Giovinazzo  
9 Ronan P. Doherty  
10 Attorneys for Defendant  
11 HOME DEPOT U.S.A., INC.  
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**PROOF OF SERVICE**

I am a resident of the State of Georgia, over the age of eighteen years, and not a party to the within action. My business address is Bondurant, Mixson & Elmore, LLP, 3900 One Atlantic Center, 1201 West Peachtree Street, N.W., Atlanta, Georgia 30309. On August 22, 2007, I served the within document(s):

**DEFENDANT'S NOTICE OF SUBSTITUTION OF  
ORIGINAL DECLARATION BY DAVID CURLEY**

- ☒ FACSIMILE - by transmitting via facsimile the document(s) listed above to the fax number set forth below.
- ☒ MAIL - by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Atlanta, Georgia addressed as set forth below.
- ☐ PERSONAL SERVICE - by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.
- ☐ OVERNIGHT COURIER - by placing the document(s) listed above in a sealed envelope with shipping prepaid, and depositing in a collection box for next day delivery to the person(s) at the address(es) set forth below via .

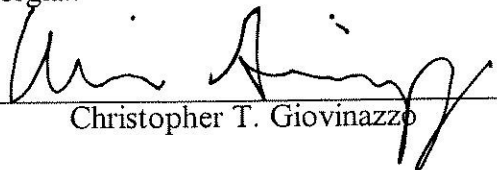
Paul E. Rice, Esq.  
Rice & Bronitsky  
350 Cambridge Avenue, Suite 225  
Palo Alto, CA 94306  
Telephone: (650) 289-9088  
Facsimile: (650) 289-9093

Attorneys For Plaintiff B&O Manufacturing,  
Inc.

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare that I am admitted to the State Bar of Georgia and pro hac vice in this court at whose direction the service was made.

Executed on August 22, 2007, at Atlanta, Georgia..

  
\_\_\_\_\_  
Christopher T. Giovinnazzo



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20 NORTHERN DISTRICT OF CALIFORNIA  
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22 B&O MANUFACTURING, INC.,

23 Plaintiff,

24 v.

25 HOME DEPOT U.S.A., INC.,

26 Defendant.

CASE NO. C07 02864 JSW

**DECLARATION OF DAVID CURLEY**

27 Pursuant to 28 U.S.C. § 1746, I, David Curley, hereby declare as follows:

28 1.

29 This Declaration is based on my own personal knowledge. I am over the age of 18 years  
30 and am competent to testify regarding those things about which I have personal knowledge.

31 150287

32 1

**DECLARATION OF DAVID CURLEY**

2.

From September 6, 2005 to May 15, 2007, I was a Senior Manager for Capital Procurement for Home Depot U.S.A., Inc. ("Home Depot"). In that role, I negotiated purchase agreements between Home Depot and vendors who supplied products to Home Depot. I am currently a Product Development Merchant for Home Depot.

3.

Home Depot's corporate headquarters and principal place of business are located in Atlanta, Georgia. I am based at Home Depot's headquarters in Atlanta and am a resident of Dallas, Georgia.

4.

Home Depot has been purchasing safety netting from B&O Manufacturing, Inc. ("B&O") for well over ten years. During the course of the business relationship between Home Depot and B&O, representatives from B&O have visited Home Depot's Atlanta, Georgia headquarters on numerous occasions.

5.

In April 2005, Home Depot and B&O entered into a Memorandum of Understanding ("MOU") under which Home Depot agreed to purchase a percentage of its new store safety netting from B&O through March 31, 2006. Shortly after executing the MOU, Home Depot pre-paid B&O over \$5 million for the split curtain safety netting systems that Home Depot committed to purchase under the MOU. Of the over \$5 million, however, B&O was unable to deliver roughly \$2 million of products for which Home Depot prepaid.



5 negotiating the terms of the Refund Agreement with Mr. Calleja. Mr. Calleja drafted the Refund  
6 Agreement on B&O's letterhead and signed it at Home Depot's Atlanta, Georgia headquarters on  
7 January 31, 2006. Thomas Single, then Vice President of Procurement for Home Depot, signed the  
8 Refund Agreement on Home Depot's behalf on February 1, 2006.  
9

10 7.

11 Home Depot's Legal Department reviewed and approved the Refund Agreement. All of  
12 Home Depot's Legal Department employees who can testify regarding the approval of the Refund  
13 Agreement are residents of Georgia and are based at Home Depot's Atlanta, Georgia headquarters.  
14

15 8.

16 I understand that in its lawsuit, B&O claims that Home Depot has failed to satisfy the  
17 volume purchasing requirements under the MOU and the June 2006 Expense Buying Agreement.  
18 Home Depot's purchasing records will be highly relevant to B&O's claims because only these  
19 records can demonstrate the percentage of new store safety netting Home Depot has purchased  
20 from B&O. B&O's records will not be able to demonstrate whether Home Depot has met the  
21 volume purchasing requirements because Home Depot's compliance with those requirements  
22 depends in part on the quantity of safety netting Home Depot has purchased from vendors other  
23 than B&O. All of Home Depot's purchasing records are located in Home Depot's headquarters in  
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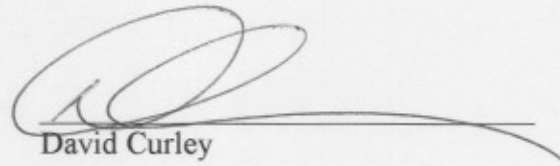
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**DECLARATION OF DAVID CURLEY**

1 Atlanta, Georgia. Similarly, Home Depot's accounting, procurement, and/or other corporate  
2 personnel who can testify to Home Depot's purchasing records and history are located in Atlanta.

3 Under penalty of perjury, I declare that the foregoing is correct and true.  
4

5 This 21<sup>st</sup> day of August, 2007.

6  
7   
8 David Curley